6/98

38/81

File No. 100(2)-GG/49.

19 49.

Collection No.

Keep.

OFFICE OF THE SECRETARY TO THE

GOVERNOR-GENERAL,

'G' Branch.

1

Pros. / Serial Nos.

Subject.

ARTICLE 24 OF THE DRAFT CONSTITUTION REGARDING

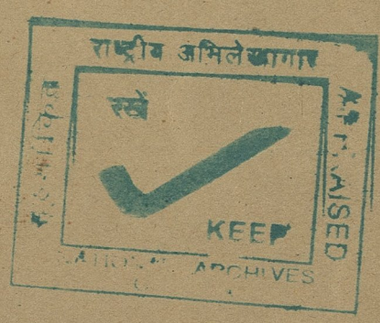
'RIGHT TO PROPERTY'.

Previous References.

F. 175(2)-GG/1947

A

Later References.



V 3.6.96

NATIONAL ARCHIVES OF INDIA

S. 97 (Unbleached).
MFP—811 S&P—5382-A—(M-1161)—23-2-48—20,00,000.

(2)

Rajaji was associated in the discussion re. the amendment of Art 24. Pl. see the compilation pp. 52 et seq. Flag A.

Ans
6.5.63

Put up

I wanted to know whether Rajaji was a party to the Constitution Amendment Acts of 1951 and 1955 whereby the article 31 (originally art 24 at the discussion stage in the Constituent Assembly) was amended and the additional articles 31A and 31B introduced whereby the question of compensation was affected.

RK 7/6

The files of 1951 & 1955 are placed below.

Rajaji was associated with the Bill of 1951 - as cabinet minister, Chairman of Cabinet Committee, & of select committee. But he was not a party to the Bill of 1955 when Dr Katju had succeeded him.

Flags A.

Ans
7.6.63

Put up

RK 7/6

Ans
8/6

JS

Draft - prepared by the Constitutional Adviser and Circulated to the Congress Party members in Nov-Dec last

AMENDMENTS PROPOSED.

(3) After clause (2) of Article 24, the following clauses be inserted:-

(2A). The payment of compensation referred to in clause (2) of this Article may be in cash or in securities (including annuities and bonds, whether negotiable or not) or partly in cash and partly in securities.

(2B). No law making provision as aforesaid shall be called in question in any Court on the ground that the compensation provided for is inadequate or unjust.

The amendments proposed above will suffice to make it clear that whatever compensation may be awarded by law cannot be questioned in Court on the ground of inadequacy; but some compensation will have to be awarded. If it is intended that even this limitation should be removed and that it should be open to the legislature to authorise acquisition of property without any compensation at all, the best course would be to omit clauses (2) and (3), if not the entire article.

NATIONAL ARCHIVES OF INDIA

(4)

50 Copies

Article 24 of the Draft Constitution.

Insert after article 24(2) of the Draft Constitution, the following new clauses:-

(2A) The payment of compensation referred to in clause (2) of this article may be in cash or in securities (including annuities and bonds) or partly in cash and partly in securities.

(2B) The amount of the compensation which is to be paid or the principles on which, and the manner in which, the compensation is to be determined, as fixed or specified in any such law as aforesaid, shall if the law so provides, be final and shall not be questioned in any Court, notwithstanding anything contained in this Part.

In addition, insert the following new paragraph in the Instrument of Instructions to the Governors:

"Without prejudice to the generality of his powers as to reservation of Bills, the Governor shall reserve for the consideration of the President any Bill which makes any such provision as is mentioned in article 24(2B) of the Constitution:

Provided that this paragraph shall not apply to any Bill which, having been reserved for the consideration of the President, is returned by him and is thereafter passed with or without amendment, by the Legislature of the State".

Some consequential amendment of article 176 may be needed, but this will not present much difficulty if the above ideas are approved.

NATIONAL ARCHIVES OF INDIA

(5)

Article 24. as proposed by the Drafting Committee.

That for article 24, the following article be substituted:-

"24. (1) No person shall be deprived of his property without compensation and save by authority of law.

Compulsory acquisition of property

(2) Nothing in this article shall affect -

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property."

NATIONAL ARCHIVES OF INDIA

(6)

Seventh Schedule.

That for entry 35 of List III of the Seventh Schedule, the following entry be substituted:-

"35. The principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined and the form and the manner in which such compensation is to be given."

NATIONAL ARCHIVES OF INDIA

(7)

ARTICLE 24 AS PROPOSED TO BE AMENDED BY
THE HON'BLE PANDIT GOVIND BALLABH PANT.

---

24. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition <u>except on payment in cash or bonds or both of the amount determined as compensation in accordance with principles laid down by such law.</u>

(3) Nothing in clause (2) of this article shall affect ---

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property.

[The portion underlined indicates the amendment proposed.]

B
31/7.

NATIONAL ARCHIVES OF INDIA

(8)

ARTICLE 24 AS PROPOSED TO BE AMENDED BY SHRI ALLADI KRISHNASWAMI AYYAR.

24. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition except on payment of compensation in cash or bonds or both, the compensation to be determined in accordance with the principles laid down by such law.

(3) Nothing in clause (2) of this article shall affect-

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property.

Note: Entry 35 of List III to remain as it is.

/The portion underlined indicates the amendment proposed/

'CHAWLA'
31/7

NATIONAL ARCHIVES OF INDIA

(9)

ARTICLE 24 AS PROPOSED TO BE AMENDED
BY SHRI T.T.KRISHNAMACHARI.

Nee P35

---

24. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable, or immovable, including any interest, in any commercial or industrial undertaking, or in any company owning such undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or acquisition unless the law provides for the payment of compensation for the property, taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined:

Provided that the compensation so payable may be paid either in cash or in bonds issued on such terms and conditions as may be laid down in the law, or partly in cash and partly in bonds so issued:

Provided further that any legislation making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein including rights or privileges in respect of land revenue shall not be called into question in any court of law on the ground that the compensation provided for therein is inadequate.

(3) Nothing in clause (2) of this article shall affect -

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property.

N.
31/7.

[The portions underlined indicate the amendments proposed.]

NATIONAL ARCHIVES OF INDIA

(10)

ARTICLE 24 AS PROPOSED TO BE AMENDED BY THE HON'BLE SHRI N. GOPALASWAMY AYYANGAR.

See p. 38

24. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for the payment of compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined. Where the compensation paid for property taken possession of or acquired for public purposes is either the amount fixed by law or an amount which is determined in accordance with the principles specified in the law, such compensation shall be deemed to be just and adequate.

(3) Nothing in clause (2) of this article shall affect -

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property.

[The portion underlined indicates the amendment proposed.]

AVT/125 copies.
31.7.1949.

NATIONAL ARCHIVES OF INDIA

(11)

Article 24.

Third Re-draft of Article 24 by the Hon'ble Dr. B.R.Ambedkar.

That for article 24, the following be substituted:-

"Compulsory acquisition of property.

24. (1) No person shall be deprived of his property save by authority of law.

(2) Neither Parliament nor the Legislature of a State shall have power to make any law authorizing the compulsory acquisition or requisitioning for public purposes of any property including any interest in property without compensation.

(3) Nothing in clause (2) of this article shall affect -

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property.

(4) Nothing in clause (2) of this article shall prevent the State from prescribing different principles for the determination of compensation for acquisition or requisitioning of property for different purposes.

(5) Nothing in this article shall derogate from the power of Parliament to declare by law that the provisions of clause (2) shall not apply or shall apply subject to such modifications as may be specified in such law to the acquisition or requisitioning of any previleges in respect of land revenue or any interest in land of any person other than those having any occupancy right therein under any existing law."

N.
10/8/49.

11.15.

NATIONAL ARCHIVES OF INDIA

(12) Alternative I

Article 24.

24. (1) No person shall be deprived of his property save by authority of law.

(2) (i) Private property (including any interest in any commercial or industrial undertaking or in any company owning such undertaking) shall not be compulsorily taken for the public use save by the authority of a law which shall not only provide for compensation for the property taken but shall also either specify the amount of the compensation or specify the principles on which, and the manner and form in which, the compensation is to be determined and given.

(ii) Where any law purporting to be a law for the abolition of landlordism (whether described as "zamindari" abolition or the abolition of "intermediaries" or of "rent-receiving interests" or the like) and for matters incidental thereto or connected therewith provides for the transference to public ownership of any land or for the acquisition, extinguishment or modification of any rights in land, and the law has received the assent of the President, the validity of any provisions contained therein shall not be called in question in any court.

(3) Nothing in clause (2) of this article shall affect -

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property.

(4) No Bill making any provision for the purposes of clause (2) of this article shall be introduced in Parliament or in the Legislature of a State without the previous sanction of the President:

Provided that where any such Bill was introduced before the commencement of this Constitution, the requirements of this clause shall be deemed to have been complied with if the Bill, after it is passed, is assented to by the President.

12/8.

* * *

NATIONAL ARCHIVES OF INDIA

(13)

Alternative II.

Article 24.

24. (1) No person shall be deprived of his property save by authority of law.

(2) No law authorising the taking of private property for the public use shall be valid without the assent of the President and the President shall not assent to any such law unless he is satisfied after consulting the Supreme Court if necessary that it provides for equitable compensation for the property taken.

(3) Nothing in clause (2) of this article shall affect -

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property.

NATIONAL ARCHIVES OF INDIA

(14) Alternative 3 — Article 24

24. (1) }
(2) } as in printed draft.

(3) Nothing in clause (2) of this article shall affect —

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property or the reform of the land tenure system.

Alternative 4 — Article 24

24. (1) No person shall be deprived of his property save by authority of law.

(2) No law authorising the taking of Compulsory private property for the public any use shall be valid without the assent of the President and the President shall not assent to any such law unless he is satisfied, after consulting the Chief Justice of India and the Chief Justice of any State that may be concerned, that the law provides for equitable compensation for the property taken:

Provided that —

(i) no such consultation shall be necessary if, in the opinion of the President, the law is based substantially upon the results of a full investigation by a Commission or other body appointed for the purpose;

(ii) the validity of any provisions of the law purporting to relate to compensation shall not be called in question in any court after the law has been assented to by the President.

(3) Nothing in clause (2) of this article shall affect —

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property.

NATIONAL ARCHIVES OF INDIA

RIGHT TO PROPERTY

Compulsory acquisition of property.

24. (1) No person shall be deprived of his property save by authority of law assented to by the President of the Union.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes without the consent of the owner under any law authorising the taking of such possession or such acquisition, unless the law provides for the payment of compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined.

(3) Nothing in clause (2) of this article shall affect —

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the reform of the land tenure system or for the promotion of public health or the prevention of danger to life or property.

NATIONAL ARCHIVES OF INDIA

RIGHT TO PROPERTY

Compulsory acquisition of property.

24. (1) No person shall be deprived of his property save by authority of law assented to by the President of the Union.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes without the consent of the owner under any law authorising the taking of such possession or such acquisition, unless the law provides for the payment of compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined.

(3) Nothing in clause (2) of this article shall affect —

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the reform of the land tenure system or for the promotion of public health or the prevention of danger to life or property.

or (c) the provisions of any law for the reform of the land tenure system made after considering the report and conclusions of a body constituted by the Government of the State concerned for the purpose of making public investigation of all matters touching the subject

NATIONAL ARCHIVES OF INDIA

(12)

UNITED STATES SUPREME COURT REPORTS

U.S. 148, LAWYERS' ED. 37.

The language used in the 5th Amendment in respect to this matter is happily chosen. The entire Amendment is a series of negations, denials of right or power in the government, the last, the one in point here, being "Nor shall private *property be taken for public use without just compensation." The noun "compensation", standing by itself, carries the idea of an equivalent. Thus we speak of damages by way of compensation, or compensatory damages, as distinguished from punitive or exemplary damages, the former being the equivalent for the injury done, and the latter imposed by way of punishment. So that if the adjective "just" had been omitted, and the provision was simply that property should not be taken without compensation, the natural import of the language would be that the compensation should be the equivalent of the property. And this is made emphatic by the adjective "just". There can, in view of the combination of those two words, be no doubt that the compensation must be a full and perfect equivalent for the property taken. [pp. 325-326, Monongahela Navigation Company v. United States.]

ML'

NATIONAL ARCHIVES OF INDIA

THE LAW OF THE AUSTRALIAN CONSTITUTION (18)

BY

DONALD KERR, M.M., LL.D.

1925.

---

381. The Commonwealth is subject to the express limitation in S. 51 (xxxi) of the Constitution that the expropriation thereunder must be "on just terms". Suppose that, in a given case, the Commonwealth Parliament passed an Act, exempting the case from the Lands Acquisition Act, and fixing a nominal sum for compensation. Would the Legislature's action be subject to review in a Court of Law on the ground that the acquisition was not "on just terms"? It is submitted that it would not, and that Parliament would be the sole judge of its terms. The High Court, it is submitted, could not hold the acquisition, in the case supposed, to be unconstitutional, because of the inadequate character of the compensation.

Even in America, notwithstanding the Fourteenth Amendment, containing guarantee of just compensation, the sum of one dollar was held to be constitutional and just compensation for the acquisition of a railway company's right-of-way by the City of Chicago, acting under*statutory authority (Chicago, etc., R. Co. v. Chicago, 166 U.S., 226.)

In Long Island Water Supply Co. v. Brroklyn, 166 U.S., 685, the Supreme Court of the United States expressed the opinion that the constitutional guarantee of just compensation was not a limitation to the power to take, but only a condition of its exercise.

It is submitted that this view likewise accurately presents the position in Australia.

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*As a matter of fact, what was actually held in the case cited was "the owner of private property taken under the right of eminent domain obtains just compensation if he is awarded such sum as, although merely nominal, is a fair and full equivalent for the thing taken from him by the public.

ML'

NATIONAL ARCHIVES OF INDIA

24. (1) No person shall be deprived of his property save by authority by law.

(2) No property, movable or immovable, including any interest, in any commercial or industrial undertaking, or in any company owning such undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or acquisition unless the law provides for compensation for the property taken possession of or acquired, and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given:

Provided that where any such law as aforesaid makes provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein including rights or privileges in respect of land revenue, the compensation fixed therein, or determined in accordance with the principles specified therein, shall be deemed to be just and adequate.

(3) Nothing in clause (2) of this article shall affect -

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property.

(4) No such law as is mentioned in clause (2) of this article, made by the Legislature of a State, shall be valid unless it has been reserved for the consideration of the President and has received his assent.

N.
4/8/49.

NATIONAL ARCHIVES OF INDIA

ARTICLE 24.

24. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest, in any commercial or industrial undertaking or in any company owning such undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or acquisition unless the law provides for compensation for the property, taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given:

Provided that where any such law as aforesaid makes provision for the transference to public ownership; or the extinguishment or modification, of rights in land intermediate between those of the cultivator and of the State including rights or privileges in respect of land revenue the compensation fixed therein, or determined in accordance with the principles specified therein, shall be deemed to be just and adequate.

(3) Nothing in clause (2) of this article shall affect -

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property.

(4) No bill or amendment making any provision for compensation as aforesaid shall be introduced or moved in Parliament or in the Legislature of a State without the previous sanction of the President.

NATIONAL ARCHIVES OF INDIA

(21)

19

Article 24.

Second Re-draft of Article 24 by the Hon'ble Dr. B.R.Ambedkar.

That for article 24, the following be substituted:-

"Compulsory acquisition of property.

24. (1) No person shall be deprived of his property save by authority of law.

(2) Neither Parliament nor the Legislature of a State shall have power to make any law authorizing the compulsory acquisition or requisitioning for public purposes of any property including any interest in property without compensation.

(3) Nothing in clause (2) of this article shall affect -

(a) the provisions of any existing law, or

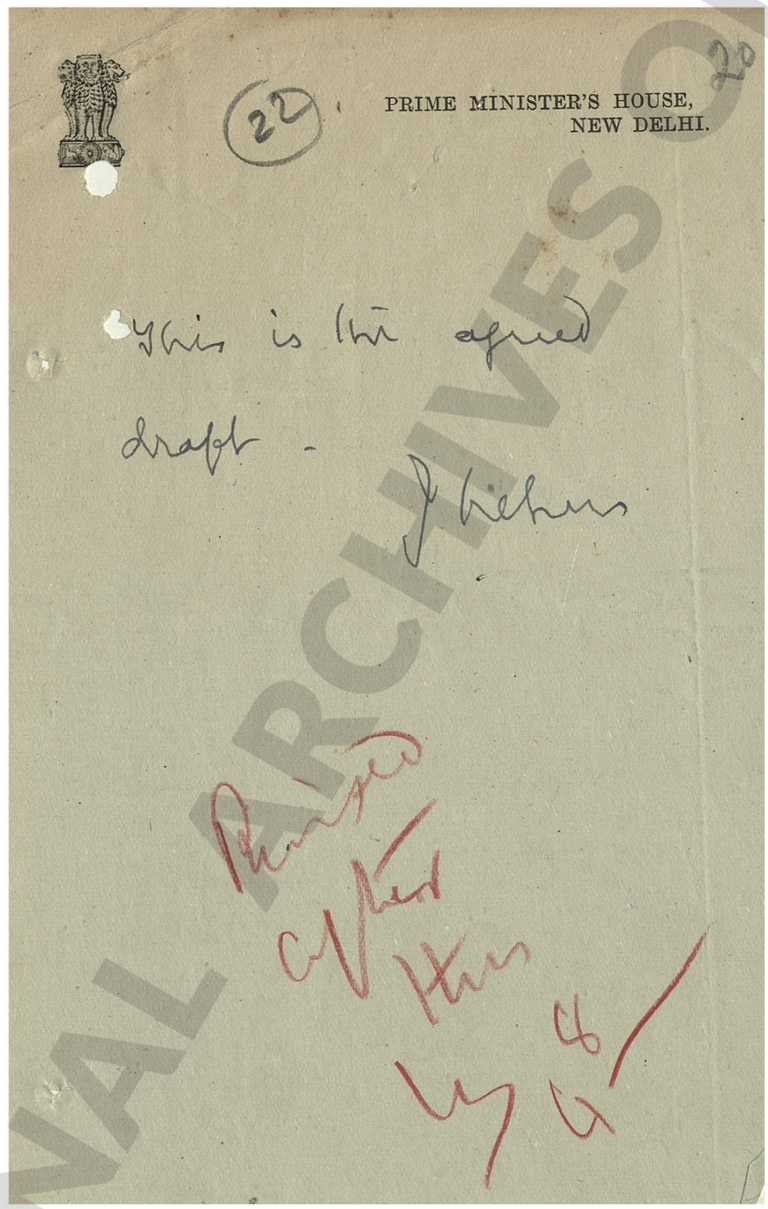
(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property.

(4) Nothing in clause (2) of this article shall prevent the State from prescribing different principles for the determination of compensation for acquisition or requisitioning of property for different purposes."

N.
9/8/49.

9.45.

NATIONAL ARCHIVES OF INDIA



PRIME MINISTER'S HOUSE,
NEW DELHI.

This is the agreed draft.

J Nehru

NATIONAL ARCHIVES OF INDIA

ARTICLE 24.

24. (1) No person shall be deprived of his property save by authority of law.

(2) No property, moveable or immoveable, including any interest, in any commercial or industrial undertaking or in any company owning such undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or acquisition unless the law provides for compensation for the property, taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

Provided that where any such law as aforesaid makes provision for the transference to public ownership or the extinguishment or modification of rights in land intermediate between those of the cultivator and of the State including rights of privileges in respect of land revenue the compensation fixed therein, or determined in accordance with the principles specified therein, shall be deemed to be just and adequate.

(3) Nothing in clause (2) of this article shall affect -

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property.

(4) No bill or amendment making any provision for compensation as aforesaid shall be introduced or moved in Parliament or in the Legislature of a State without the previous sanction of the President.

NATIONAL ARCHIVES OF INDIA

PREMIER
UNITED PROVINCES

(24) 22

New Delhi.
August 5, 1949.

My dear Rajaji,

I do not know how to thank you for your very kind note which I have just received. It reflects the generous magnanimity which we have all learnt to associate with you. I have heaved a sigh of relief as I was throughout oppressed by the feeling that I was at the root of the trouble and but for my obstinacy no occasion for any unpleasantness could have arisen. May I respectfully congratulate you for having healed the breach and restored cordiality with your unfailing grace.

I enclose herewith the latest draft in its final form. It marks a considerable improvement on the draft I showed you yesterday. I beg to thank you again for all the trouble you took in this connexion. I could not persuade other colleagues beyond what is embodied in this draft.

Yours sincerely,

GBPant

His Excellency Shri
C. Rajagopalichari,
Governor-General, India,
New Delhi.

NATIONAL ARCHIVES OF INDIA

ARTICLE 24.

24. (1) No person shall be deprived of his property save by authority of law.

(2) (i) No property, movable or immovable, including any interest in any commercial or industrial undertaking or in any company owning such undertaking, shall be taken possession of or acquired for public purposes under any law unless the law provides for compensation in cash or bonds or both for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

(ii) Where any such law as aforesaid makes provision for the transference to public ownership of any landed estates, or for the acquisition, extinguishment, or modification of rights in land held by proprietors, sub-proprietors and other intermediaries between the cultivator and the State, including rights or privileges in respect of land revenue, any compensation fixed by the law, or determined in accordance with the principles specified therein, shall be final and shall not be called in question in any court.

(3) Nothing in clause (2) of this article shall affect -

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property.

(4) No Bill making any provision for the purposes of clause (2) of this article shall be introduced in Parliament or in the Legislature of a State without the previous sanction of the President:

Provided that....

NATIONAL ARCHIVES OF INDIA

(26)

Provided that where any such Bill was introduced before the commencement of this Constitution, the requirements of this clause shall be deemed to have been complied with if the Bill, after it is passed, is assented to by the President.

B
5/8.
12.05.

NATIONAL ARCHIVES OF INDIA

Confidential

(27)

25

August 5, 1947.

My dear Lal,

Herewith the final re-draft of "~~Article 24~~" in the form in which, I understand, it is to come before this evening's part-meeting. Please get it typed for H.E. for his information.

Yours sincerely,

B. N. Rau

ARTICLE 24.

24. (1) No person shall be deprived of his property save by authority of law.

(2) (i) No property, movable or immovable, including any interest in any commercial or industrial undertaking or in any company owning such undertaking, shall be taken possession of or acquired for public purposes under any law unless the law provides for compensation in cash or bonds or both for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

(ii) Where any such law as aforesaid makes provision for the transference to public ownership of any landed estates, or for the acquisition, extinguishment, or modification of rights in land held by proprietors, sub-proprietors and other intermediaries between the cultivator and the State, including rights or privileges in respect of land revenue, any compensation fixed by the law, or determined in accordance with the principles specified therein, shall be final and shall not be called in question in any court.

(3) Nothing in clause (2) of this article shall affect -

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property.

(4) No Bill making any provision for the purposes of clause (2) of this article shall be introduced in Parliament or in the Legislature of a State without the previous sanction of the President:

Provided that....

NATIONAL ARCHIVES OF INDIA

Provided that where any such Bill was introduced before the commencement of this Constitution, the requirements of this clause shall be deemed to have been complied with if the Bill, after it is passed, is assented to by the President.

B
5/8.
12.05.

NATIONAL ARCHIVES OF INDIA

(30) 28

5th August 1949.

Dear Sir,

His Excellency thanks you for your kind note of the 5th August and the enclosed draft.

Yours sincerely,

for Secretary to the
Governor-General.

Sri B.N. Rau, I.C.S.,
Constitution Adviser,
Constituent Assembly Secretariat
New Delhi.

NATIONAL ARCHIVES OF INDIA

Dy. No. 570-Cab./49

(31)

IMMEDIATE
SECRET.

29

No. 1576/CN/49.
GOVERNMENT OF INDIA.
CABINET SECRETARIAT.

New Delhi, the 11th August, 1949.

...

In continuation of this Secretariat memorandum of even number dated the 10th August, 1949, the undersigned is directed to state that the following subject will constitute an additional item of agenda for the Cabinet meeting to be held at 9 A.M. on Saturday, the 13th August, 1949:-

S_U_B_J_E_C_T.

Article 24 of the Draft Constitution. (Prime Minister).

Note by the Prime Minister attached.

The following documents are also attached and form the background to the Prime Minister's note:-

(a) Note on Article 24 relating to right to property- various stages of its consideration in the Constituent Assembly and its Committees - Annexure I.

(b) Note prepared by the Drafting Committee after discussion with Provincial Premiers -Annexure II.

(c) Article 24 as proposed to be amended by Shri T.T.Krishnamachari on 31.7.49 - Annexure III.

(d) Article 24 as proposed to be amended by Shri Alladi Krishnaswami Ayyar on 31.7.49 -Annexure IV.

(e) Article 24 as proposed to be amended by the Hon'ble Pandit Govind Ballabh Pant on 31-7-49 - Annexure V.

(f) Article 24 as proposed to be amended by the Hon'ble Shri N.Gopalaswami Ayyangar on 31.7.49 - Annexure VI.

(g) Article 24 as proposed to be amended by the Hon'ble Pandit Govind Ballabh Pant on 2.8.49 - Annexure VII.

(h) Article 24 as proposed by the Drafting Committee on 3.8.49 - Annexure VIII.

(i) Article 24 as proposed to be amended by Mr. Munshi on 5.8.49 - Annexure IX.

(j) Re-draft of Article 24 as proposed by the Hon'ble Dr. B.R.Ambedkar on 6.8.49 - Annexure X.

(k) Second re-draft of Article 24 by the Hon'ble Dr. B.R.Ambedkar on 9. 8. 49 - Annexure XI.

(l) Third re-draft of Article 24 by the Hon'ble Dr. B.R. Ambedkar on 10.8. 49. - Annexure XII.

(E.C.Donoghue)
for Joint Secretary to the Cabinet.

To

All Ministers.
Secretary, Ministry of Law.

...

Copy with a copy of the enclosures forwarded to the Secretary to the Governor-General/the Principal Private Secretary to the Prime Minister.

For information (Cf. Flag W)

E Donoghue

(E.C.Donoghue)
Under Secretary to the Cabinet.

12.8.49

11/8/49

11/8

NATIONAL ARCHIVES OF INDIA

(32)

Copy No. 17

NOTE FOR CABINET.

ARTICLE 24 OF THE DRAFT CONSTITUTION.

Article 24 of the Draft Constitution for India, dealing with the acquisition of property and the compensation to be paid therefor, has given rise to a great deal of argument.

2. In the course of this argument many rather secondary issues, but which are nevertheless very vital, have been raised. The matter has thus become more important than it need have been.

3. The principal issue which has led to a difference of opinion among the members of the Assembly relates to the power of the judiciary to hold that the principles of compensation laid down by legislature are within its competence and in accordance with the fundamental provisions of the Constitution or not. That is to say, whether the judiciary can overrule the legislature in so far as the principles governing compensation for land or property acquired are concerned. The actual application of such principles will, of course, always be justiciable.

4. There are three viewpoints:-

(i) That the courts should have this power in regard to the principles governing compensation both for zamindari property and non-zamindari or non-agricultural property, that is in all cases where compensation is to be given. The principles laid down by the legislature may be challenged in a court of law.

(ii) The will of the legislature should be supreme in regard to the laying down of these principles of compensation and they should not be capable of being challenged in a court of law. The legislature would include the Central as well as the State legislature. It may be laid down, however, that any law dealing with such matters requires the previous approval or the subsequent assent of the President of the Republic.

(iii) Two types of property are differentiated. Zamindari property and the like and other kinds of property, chiefly industrial plants etc. In the case of the former, it is proposed that the legislature should be the final authority to determine the principles of compensation on acquisition. In the case of the latter, it is suggested that the courts should have the power to intervene, if necessary.

5. As a result of a great deal of discussion a kind of compromise formula based on the third proposal mentioned above was evolved. But, as is usual with the compromise formula, it is criticised from various points of view. It seems desirable that the Cabinet should consider this matter and that members of Cabinet should speak with some kind of a united voice in the Assembly on this subject. I, therefore, suggest that this be put up for consideration of the Cabinet at the next meeting to be held on the 13th August.

Sd/- J. Nehru
10.8.1949.

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NATIONAL ARCHIVES OF INDIA

ANNEXURE I

Note on Article 24 relating to right to property - various stages of its consideration in the Constituent Assembly and its Committees.

To the sub-committee on Fundamental Rights, Shri K.M.Munshi first recommended this provision in the following form:-

"(1) The right to property is guaranteed by this Constitution to all citizens, corporations, and bodies, social, economic and religious.

(2) 'Property' in Section 1 shall include immovable property and any rights in or over such property or any undertaking run for profit or any interest in or in any company owning any such undertaking.

(3) No soldier, in time of peace, be quartered in any house, without the consent of the owner and in time of war except in a manner prescribed by the law of the Union.

(4) Expropriation for public reasons only shall be permitted upon conditions determined by law and in return for just and adequate consideration determined according to principles previously laid down by it.

(5) The right to private property includes the right to the free disposal of property subject however to limitations imposed by law or usage in the interests of such of the owners as are not capable of looking after their interests."

The sub-committee after considering the above provision decided to delete clause (1), (2), (3) and (5) and approved clause (4) in the following redrafted form:-

"(4) No property, movable or immovable, of any person or corporation including any interest in any commercial or industrial undertaking shall be taken or acquired for public use unless the law provides for the payment of just compensation for the property taken or acquired and specifies the principles on which and the manner in which the compensation is to be determined." In taking this decision the Committee discussed at length the precise form in which Section 299 of the Government of India Act, 1935, should be incorporated in the proposed clause. The discussion mainly turned on --

(i) whether immovable property is also to be added;
(ii) whether the expression "just compensation" should be substituted for "compensation" and
(iii) whether the Legislature is to be given the power to fix the amount of compensation.

The Advisory Committee considered this clause at its meeting held on 22.4.1947 and it was then decided that the word "just" occurring before the word "compensation" should be deleted. The clause was accordingly adopted in the following form:-

"19. No property, movable or immovable, of any person or corporation, including any interest in any commercial or industrial undertaking, shall be taken or acquired for public use unless the law provides for the payment of compensation for the property taken or acquired and specifies the principles on which and the manner in which the compensation is to be determined."

The Assembly considered the clause as recommended by the Advisory Committee and after a good deal of debate on an amendment moved by Raja Jagannath Baksh Singh, for the insertion of the word "just" before the word "compensation", the clause was adopted without any change, In fact in the end of the debate the mover of the amendment himself withdrew it. In winding up the debate, the Hon'ble Sardar Vallabhbhai Patel explained the meaning of the clause in the following words:-

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(34)

"Land will be required for many public purposes, not only land but so many other things may have to be acquired. And the State will acquire them after paying compensation and not expropriate them."

He further stated that it was not understanding the real meaning of the clause to say that this clause was only for the purpose of acquiring Zamindari. "This clause here will not become the law tomorrow or the day after; it will take at least a year more and before then, most of the Zamindaris will be liquidated. Even under the present Acts or laws in the different provinces legislation is being brought in to liquidate Zamindaris either by paying just compensation or adequate compensation or whatever the legislatures there think fit. * * *

* * * * *

The process of acquisition is already there and the legislatures are already taking steps to liquidate the Zamindaris."

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(35)

The Drafting Committee redrafted this clause as follows in the first instance:-

"(1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition unless the law provides for the payment of compensation for the property taken possession of or acquired and either fixes the amount of the compensation or specifies the principles on which and the manner in which the compensation is to be determined."

The Committee, at a later meeting, added a further sub-clause (3) to this clause:

"(3) Nothing in clause (2) of this article shall affect -

(a) the provisions of any law in force at the date of commencement of this Constitution, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property."

Article 24 as now appearing in the Draft Constitution embodies the above decisions of the Drafting Committee.

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ARTICLE 24. ANNEXURE II

Draft prepared by the Drafting Committee after discussion with Provincial Premiers

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That for article 24, the following article be substituted:-

"24. (1) No person shall be deprived of his property without compensation and save by authority of law.

Compulsory acquisition of property

(2) Nothing in this article shall effect -

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property."

Seventh Schedule.

That for entry 35 of List III of the Seventh Schedule, the following entry be substituted:-

"35. The principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined and the form and the manner in which such compensation is to be given."

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ANNEXURE III

ARTICLE 24 AS PROPOSED TO BE AMENDED
BY SHRI T.T.KRISHNAMACHARI ON 31.7.49.

24. (1) No person shall be deprived of his property save by authority of law.

(2) No property movable, or immovable including any interest, in any commercial or industrial undertaking, or in any company owning such undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or acquisition unless the law provides for the payment of compensation for the property, taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined:

Provided that the compensation so payable may be paid either in cash or in bonds issued on such terms and conditions as may be laid down in the law, or partly in cash and partly in bonds so issued:

Provided further that any legislation making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein including rights or privileges in respect of land revenue shall not be called into question in any court of law on the ground that the compensation provided for therein is inadequate.

(3) Nothing in clause (2) of this article shall affect -

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property.

[The portions underlined indicate the amendments proposed.]

NATIONAL ARCHIVES OF INDIA

(3b)

ANNEXURE IV

ARTICLE 24 AS PROPOSED TO BE AMENDED BY SHRI ALLADI KRISHNASWAMI AYYAR ON 31 . 7 . 1949.

24. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition except on payment of compensation in cash or bonds or both, the compensation to be determined in accordance with the principles laid down by such law.

(3) Nothing in clause (2) of this article shall affect-

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property.

Note: Entry 35 of List III to remain as it is.

/ The portion underlined indicates the amendment proposed /

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ANNEXURE V

ARTICLE 24-AS PROPOSED TO BE AMENDED BY THE HON'BLE PANDIT GOVIND BALLABH PANT ON 31-7-49

24. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition except on payment, in cash or bonds or both, of the amount determined as compensation in accordance with principles laid down by such law.

(3) Nothing in clause (2) of this article shall affect --

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property.

/The portion underlined indicates the amendment proposed./

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ANNEXURE VI

ARTICLE 24 AS PROPOSED TO BE AMENDED BY THE HON'BLE SHRI N. GOPALASWAMY AYYANGAR ON 31-7-1949.

24 (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for the payment of compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined. Where the compensation paid for property taken possession of or acquired for public purposes is either the amount fixed by law or an amount which is determined in accordance with the principles specified in the law, such compensation shall be deemed to be just and adequate.

(3) Nothing in clause (2) of this article shall affect -

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property.

[The portion underlined indicates the amendment proposed.]

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ANNEXURE VII

ARTICLE 24 AS PROPOSED TO BE AMENDED BY THE HON'BLE PANDIT GOVIND BALLABH PANT ON 2.8.49.

24. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition unless the law provides for the payment in cash or bonds or both of the amount determined as compensation in accordance with principles laid down by such law.

(3) Nothing in clause (2) of this article shall affect ---

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property.

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ANNEXURE VIII

REDRAFT OF ARTICLE 24 AS PROPOSED BY THE DRAFTING COMMITTEE ON 3. 8. 1949.

That for article 24, the following article be substituted:-

"Compulsory acquisition of property.

24. (1) No person shall be deprived of his property save by authority of law.

(2) Neither Parliament nor the Legislature of a State shall have power to make any law authorising the compulsory acquisition or requisitioning for public purposes of any property including any interest in such property without compensation.

(3) Nothing in clause (2) of this article shall affect -

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property."

Note.- This amendment should be read along with the amendment proposed by the Drafting Committee with regard to entry 35 of List III of the Seventh Schedule which is as follows:-

That for entry 35 of List III of the Seventh Schedule, the following entry be substituted:-

"35. The principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined and the form and the manner in which such compensation is to be given."

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ANNEXURE IX.

ARTICLE 24 AS PROPOSED TO BE AMENDED BY MR. MUNSHI ON 5.8.1949.

24. (1) No person shall be deprived of his property save by authority of law.

(2) (i) No property, movable or immovable, including any interest in any commercial or industrial undertaking or in any company owning such undertaking, shall be taken possession of or acquired for public purposes under any law unless the law provides for compensation in cash or bonds both for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

(ii) Where any such law as aforesaid makes provision for the transference to public ownership of any landed estates, or for the acquisition, extinguishment, or modification of rights in land held by proprietors, sub-proprietors and other intermediaries between the cultivator and the State, including rights or privileges in respect of land revenue, any compensation fixed by the law, or determined in accordance with the principles specified therein, shall be final and shall not be called in question in any court.

(3) Nothing in clause (2) of this article shall affect -

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property.

(4) No Bill making any provision for the purposes of clause (2) of this article shall be introduced in Parliament or in the Legislature of a State without the previous sanction of the President:

Provided that...

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Provided that where any such Bill was introduced before the commencement of this Constitution, the requirements of this clause shall be deemed to have been complied with if the Bill, after it is passed, is assented to by the President.

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(45)

ANNEXURE X

REDRAFT OF ARTICLE 24 AS PROPOSED BY THE HON'BLE DR. B.R.AMBEDKAR ON 6.8.49.

That for article 24, the following article be substituted:-

"Compulsory acquisition of property. 24 (1) No person shall be deprived of his property save by authority of law.

(2) Neither Parliament nor the Legislature of a State shall have power to make any law authorising the compulsory acquisition or requisitioning for public purposes of any property including any interest in such property without compensation.

(3) Nothing in clause (2) of this article shall affect-

(a) that provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property.

(4) The appropriate Legislature may by law prescribe the principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined and the form and the manner in which such compensation is to be given:

Provided that nothing in clause (4) shall prevent the Legislature after taking into consideration the purpose of the acquisition or requisition from prescribing different principles for the delimitation of compensation for different purposes.

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ANNEXURE XI

SECOND RE-DRAFT OF ARTICLE 24 BY THE HON'BLE DR. B.R. AMBEDKAR ON 9. 8. 1949

That for article 24, the following be substituted:-

"Compulsory acquisition of property. 24 (1) No person shall be deprived of his property save by authority of law.

(2) Neither Parliament nor the Legislature of a State shall have power to make any law authorizing the compulsor acquisition or requisitioning for public purposes of any property including any interest in property without compensation.

(3) Nothing in clause (2) of this article shall affect -
(a) the provisions of any existing law, or
(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property.

(4) Nothing in clause (2) of this article shall prevent the State from prescribing different principles for the determination of compensation for acquisition or requisitioning of property for different purposes."

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ANNEXURE XII

45

THIRD RE-DRAFT OF ARTICLE 24 BY THE HON'BLE DR. B.R.AMBEDKAR ON 10.8.49.

That for article 24, the following be substituted:-

"Compulsory acquisition of property.

24. (1) No person shall be deprived of his property save by authority of law.

(2) Neither Parliament nor the Legislature of a State shall have power to make any law authorizing the compulsory acquisition or requisitioning for public purposes of any property including any interest in property without compensation.

(3) Nothing in clause (2) of this article shall affect -

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property.

(4) Nothing in clause (2) of this article shall prevent the State from prescribing different principles for the determination of compensation for acquisition or requisitioning of property for different purposes.

(5) Nothing in this article shall derogate from the power of Parliament to declare by law that the provisions of clause (2) shall not apply or shall apply subject to such modifications as may be specified in such law to the acquisition or requisitioning of any previleges in respect of land revenue or any interest in land of any person other than those having any occupancy right therein under any existing law."

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(48) 46

New Delhi,
August 13, '47.

Dear Mr. Krishnamurti,

As desired, I send herewith two copies of Sir B.N. Rau's latest redraft of article 24 relating to property rights. You may kindly give one copy to Mr. Lal.

Copy sent to HE 13/8

Yours Sincerely,
B Shiva Rau

Shri S. Krishnamurti,
Private Secretary to H.E. the
Governor General.

(49)

Article 24.

24. (1) No person shall be deprived of his property save by authority of law.

(2) No law authorising the taking of private property for the public use shall be valid without the assent of the President and the President shall not assent to any such law unless he is satisfied after consulting the Supreme Court if necessary that it provides for equitable compensation for the property taken.

(3) Nothing in clause (2) of this article shall affect —

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property.

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MEMORANDUM.

Your Excellency

This is Sir B. N. Rau's latest redraft.

B. N. Rau
13/8

P. S. V. 14.

NATIONAL ARCHIVES OF INDIA

(51) Article 24.

24. (1) No person shall be deprived of his property save by authority of law.

(2) No law authorising the taking of private property for the public use shall be valid without the assent of the President and the President shall not assent to any such law unless he is satisfied after consulting the Supreme Court if necessary that it provides for equitable compensation for the property taken.

(3) Nothing in clause (2) of this article shall affect --

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property.

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(52)

D.O. no. CA. 19(5)/Cons/49. 50

CONSTITUTIONAL ADVISER

New Delhi,
August 16, 1949.

My dear Sir,

H.E. asked me on Sunday last to prepare certain additional drafts of "article 24" as alternatives to those already prepared and sent to him. I am accordingly enclosing herewith two further drafts prepared in the light of Sunday's discussions. The Prime Minister has called a meeting at 3.30 P.M. tomorrow (Wednesday) at Government House; presumably H.E. will, if he considers necessary, discuss these drafts as well at the meeting.

In the draft marked "alternative 3", I have not thought it necessary, in clause (3)(b), to refer to any law for the protection of the property of minors and other disqualified proprietors. Taking possession of a minor's estate for its better management can hardly be described as taking possession of property for public purposes and will not therefore fall within the language of clause (2). In any event, such a law would seem to be covered by clause (3)(a) and it is therefore hardly necessary to mention it again in clause (3)(b). As desired by H.E., I have added at the end of clause (3)(b) the words "or the reform of the land tenure system". This is quite a neat way of referring to "zamindari" abolition; it is, however, likely to be attacked from two opposite sides. The phrase "reform of the land tenure system" is arguably wide enough to cover not only zamindari abolition but also the abolition of non-cultivating peasant proprietors and may therefore frighten the small proprietors in Madras and in East Punjab. Again, as now worded, the clause would permit expropriation of zamindaris without any compensation whatever provided the/~~abolition~~ expropriation is undertaken for the purpose of reforming the land tenure system.

I .....

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(53)

I showed both the new drafts to the Prime Minister this morning. He thought that alternative 3 might be objected to on the second of the above grounds. As regards alternative 4, he thought that any consultation with particular judges was not likely to be of much use, as none of them can be said to be specially qualified to pronounce judgment on complicated issues of policy. He has suggested that the provision for consultation be deleted and that the provision referring to a full investigation by a Commission be cast in the form of a positive direction. I am at present trying to see if this can be done; meanwhile, I am sending the additional drafts as they stand in case H.E. desires copies of them (with or without any modifications) to be made and circulated to those who have been invited to tomorrow's meeting.

Yours sincerely,
B. N. Rau

Sri Shavax A. Lal, C.I.E.,
Private Secretary to H.E. the Governor-General,
New Delhi.

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MINISTER FOR INDUSTRY & SUPPLY
GOVERNMENT OF INDIA

(54)

52

NEW DELHI.

13th August, 1949

My dear Rajaji,

I was told that you had wanted to meet us this evening at 6 O'clock. I now understand the meeting will be held tomorrow. I have arranged to go out of Delhi for two or three days and I am sorry I cannot come tomorrow morning. Ambedkar is also going out tonight and will return on Tuesday night. Munshi also is going to Bombay early tomorrow morning. Matthai and B. N. Rao will be here. You may have a preliminary discussion with them tomorrow but I suggest you should call all of us on 17th afternoon if that suits you. Meanwhile Munshi will return with Sardar's reaction.

I am glad you are taking an active interest in the matter and hope you will be able to arrive at a satisfactory draft, fair to all concerned.

Yours sincerely,

Syama Prasad Mookerjee

His Excellency Shri C. Rajagopalachari,
Governor-General of India,
Government House,
New Delhi

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SECRET. IMMEDIATE.

(55) 53

14th August 1949.

My dear Jawaharlal ji,

— Please see enclosed letter from Syama Prasad Mookerjee. I think it would be best, all things considered, you ask people to come together on 17th afternoon, say at 3.30 p.m., to my room for a conference on the subject. I think this would be better than my asking them.

Yours sincerely
Sd/- C. Rajagopalachari

Issued with the order:
Sd/
14/8/49

The Hon'ble Pandit Jawaharlal Nehru,
Prime Minister.

3.30 Conference for H.E.'s Study (Proof)

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No.100(2)-GG/49. (56) 54

SECRET & Personal

15th August 1949

My dear Vallabhbhai.

Greetings to you on this anniversary day when we happen to be in different places. I hope you will soon be restored to health and the concern of all our people terminated for the time being.

This 'Article 24' seems to be a thing round which no two men will agree. Whatever is proposed is objected to by someone or other!

The original form as printed in the book by the Drafting Committee (and this was what you got the House to accept) appears to me the best. We need not tamper with it. We should even retain the word "payment" where it stands with all the consequences the lawyers have pointed out. This will give the greatest confidence to all concerned. The only thing to be amended in order to prevent giving a handle to our political enemies is to amend clause (3)(b) so that it may read as follows:

"Nothing in clause (2) of this article will affect —

(a) the provisions of any existing law or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the reform of land tenure or the promotion of public health or the prevention of danger to life or property or the care of property belonging to minors and other disqualified persons. (The last is an omission to be supplied).

This will give all that the Zamindari Abolition people want, and secure confidence among business men by ensuring payment of compensation whenever nationalisation of any industry is sought. I believe if you agree to this, we

A.S. 16/8
Secy:

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(57) 55

can get it through. This formula would seem to be the simplest and fairest.

I have not spoken about this to anyone else but B.N.Rao. He says this would be legally quite enough and sound in principle.

Yours sincerely

Sd/- C. Rajagopalachari

Issued in a registered cover. Immediate
marked Secret & Personal

15/8/47

The Honourable
Sardar Vallabhbhai Patel,
Deputy Prime Minister,
(Camp) BOMBAY.

Birla House
Mount Pleasant Road,
Malabar Hill,

NATIONAL ARCHIVES OF INDIA

PRIME MINISTER,
INDIA.

(58) 56

No. 1163-P.M.

New Delhi,
August 16, 1949.

7

My dear Rajaji,

I enclose a copy of a letter I am sending to Dr Matthai, Syama Prasad, Ambedkar, Gopalaswami and Neogy. Also to B.N. Rau and K.M. Munshi. You will notice that I have asked them to come to Government House tomorrow, 17th August, at 3:30 p.m.

Yours
Jawaharlal

His Excellency
Shri C. Rajagopalachari.

Seen has been
16.8.49

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(59) 57

No. 1162-P.M.

New Delhi,
August 16, 1949.

My dear

It is suggested that a few of us might meet the Governor General for an informal talk about Article 24 of the Draft Constitution. I shall be grateful if you could come to Government House tomorrow, Wednesday 17th August, at 3:30 p.m. for this purpose.

Yours sincerely,

Sd/- Jawaharlal Nehru.

1. The Hon'ble Dr B.R. Ambedkar.
2. The Hon'ble Dr John Matthai.
3. The Hon'ble Dr Syama Prasad Mookerjee.
4. The Hon'ble Shri N. Goapalaswami Ayyangar.
5. The Hon'ble Shri K.C. Neogy.
6. Shri K.M. Munshi.
7. Shri B.N. Rau.

NATIONAL ARCHIVES OF INDIA

PRIME MINISTER,
INDIA.

(60) 58

No.1165-P.M.

New Delhi,
August 16, 1949.

p.57 ante

My dear

In continuation of my letter to you today about to-morrow's meeting at Government House to consider Section 24, it has been suggested that we might meet a little earlier. This will give us a little more time for discussion and suit some people better. We are, therefore, fixing the time at 2.45 p.m. to-morrow at Government House. I hope this will suit you.

Yours sincerely,

Sd/- Jawaharlal Nehru.

Prime minister's

1. The Hon'ble Dr B.R. Ambedkar.
2. The Hon'ble Dr John Matthai.
3. The Hon'ble Dr Syama Prasad Mookerjee.
4. The Hon'ble Shri N. Gopalaswami Ayyangar.
5. The Hon'ble Shri K.C. Neogy.
6. Shri K.M. Munshi.
7. Shri B.N. Rau.

Copy to: His Excellency
Shri C. Rajagopalachari.

J Nehru

NATIONAL ARCHIVES OF INDIA

59

(61)

CONSTITUTIONAL ADVISER

4, Hardinge Avenue,
New Delhi, 17th Aug. '49.

My dear Lal,

I am sending herewith a draft of yet another alternative version of Article 24, which is designed to carry out the Prime Minister's suggestions. Whether it actually carries them out I am not quite sure; but I am sending him a copy of the draft immedia tely.

Yours sincerely,

B. N. Rau

S. A. Lal, Esq., C.I.E.,
Private Secretary to the Governor-General,
Government House,
New Delhi.

NATIONAL ARCHIVES OF INDIA

Alternative V.

Article 24.

(62)

24. (1) No person shall be deprived of his property save by authority of law.

(2) (a) No law authorising the compulsory taking of private property for the public use shall be valid without the assent of the President and the President shall not assent to any such law unless in his opinion it provides for equitable compensation for the property taken.

(b) Where the President has assented to any such law as aforesaid, the validity of its provisions purporting to relate to compensation shall not be called in question in any court.

(c) No Bill providing for the compulsory taking of private property for the public use in pursuance of any general scheme shall be introduced in the Parliament of the Union or the Legislature of a State without the previous sanction of the President; and before giving his previous sanction, the President shall satisfy himself that the provisions of the Bill are based substantially on the results of ~~this~~ a full (and public) investigation of the issues involved by a Commission appointed for the purpose, [at least one of whose members was a person who has been, or is, or is qualified to be appointed as, a Judge of the Supreme Court]:

Provided that where such a Bill was introduced before the commencement of this Constitution, the requirements of this sub-clause shall be deemed to have been complied with, if

NATIONAL ARCHIVES OF INDIA

(63)

the Bill, after it is passed, receives the assent of the President.

(3) Nothing in clause (2) of this article shall affect -

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property.

NATIONAL ARCHIVES OF INDIA

SECRET (64) 9C 62

17th August 1949

As a result of discussions held on the 17th August 1949, in which the following participated, it was unanimously agreed that Article 24 in the Constitution may be amended as in the enclosed draft.

The Governor General
The Honourable the Prime Minister
The Honourable Dr. B.R.Ambedkar
The Honourable Dr. John Matthai
The Honourable Dr. Syama Prasad Mookerjee
The Honourable Shri N.Gopalaswami Ayyangar
The Honourable Shri K.C.Neogy
Shri K.M.Munshi
Shri Alladi Krishnaswami Iyer.

sd/- C.R.

(1) The Honourable
Pandit Jawaharlal Nehru,
Prime Minister,
New Delhi.

(2) Shri B.N.Rau

(3) The Honourable Sardar Vallabhbhai Patel, Camp Bombay.

(4) The Honourable Dr. B.R.Ambedkar.

File with Cabinet papers subject.

Issued
17/8/1949.

Seen
18/8/49

NATIONAL ARCHIVES OF INDIA

(65)

63

RIGHT TO PROPERTY

Compulsory acquisition of property.

24. (1) No person shall be deprived of his property save by authority of law assented to by the President of the Union.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes ~~without the consent of the owner~~ under any law authorising the taking of such possession or such acquisition, unless the law provides for ~~the payment of~~ compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

(3) Nothing in clause (2) of this article shall affect —

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty ⊗ or for ~~the reform of the land tenure system or for~~ the promotion of public health or the prevention of danger to life or property.

⊗ This amendment was conveyed in HE's letter dt 18.8.1949.

As approved unanimously on 17.8.49.

C.R. 178

NATIONAL ARCHIVES OF INDIA

(66)

Spare
17.8.1948.
(64)

RIGHT TO PROPERTY

Compulsory acquisition of property.

24. (1) No person shall be deprived of his property save by authority of law assented to by the President of the Union.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

(3) Nothing in clause (2) of this article shall affect —

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty for the promotion of public health or the prevention of danger to life or property.

NATIONAL ARCHIVES OF INDIA

SECRET

(67) 65

18th August 1949

In the draft Article 24 of the Constitution sent with my letter of yesterday, the words "or penalty" may kindly be inserted after the word "tax" in sub-clause (b) of clause 3 of the draft.

Sd/- C.R.

The Honourable
Pandit Jawaharlal Nehru,
Prime Minister, India.

Also to: Shri B.N.Rau
The Hon. Sardar Vallabhbhai Patel, Camp Bombay
" " Dr. B.R.Ambedkar.

Issued 18/8/1949.

NATIONAL ARCHIVES OF INDIA

MINISTER FOR LAW
INDIA

(68) 1, Hardinge Avenue,
NEW DELHI. 66

Dated 18th August 1949

My dear Rajaji, P. 62 ante Flag 'W'

Thank you for your letter of the 17th enclosing the draft of Article 24. The draft of the Article enclosed by you may require to be put in a different shape without, of course, altering the substance in any way. I will bring the re-draft to you when it is ready. I have also another suggestion which I am revolving in my mind and which may help us to modify the severity of the Article to make any National project more easy an accomplishment. I shall discuss the suggestion with you when I come with the redraft.

page 64 ante

It was very kind of you to have taken part in the dissolution of this controversy with so much success and which appeared to me to be interminable.

Yours Sincerely
B R Ambedkar

His Excellency Shri C.Rajagopalachari,
Governor-General of India,
Government House,
New Delhi.

Submitted with papers.
18/8/49 18/8/49
C.S.

He has seen 19/8

NATIONAL ARCHIVES OF INDIA

NATIONAL ARCHIVES OF INDIA

MUNSHI

Camp: 2 Windsor Place,
NEW DELHI.
Aug. 19, 1949

CONFIDENTIAL.

My dear Rajaji.

I have been thinking over the suggestion that was made the other day at the conference relating to Article 24 of the Constitution that a convention of previous consultation would be a good substitute for the previous sanction of the President. After careful consideration, I have not been able to change my view that previous sanction would be more efficacious to secure uniformity of policy throughout the country.

2. Dr.Matthai gave you one instance of what previous consultation with the Provincial Premiers means at present. I had an opportunity recently to participate in one or two such consultations. I invariably found that the attitude of the Provinces is to resist uniformity and even when decisions are taken indicating a common measure of agreement, individual Provinces go to their capitals and stick to their individual views. If this is the present situation, Your Excellency can easily realise what will be the position if this tendency increases or a Government comes into power in one or more Provinces, not pledged to the Government at the Centre by party loyalty. Previous sanction of the President, therefore, will have the merit of making any Government think twice before putting up a proposal which would be turned down by the President. This will be an invisibly psychological deterrent for any one Province to take a bit in its mouth in this matter.

pto

Submitted
JJ/8k
19-8-49

(70)

3. There is also another danger. If a Bill of a drastic nature is moved and introduced and a wide-spread campaign is carried on for its adoption in the State, as was done in Madras, and after a heated controversy in the Legislature, the majority party passes the Bill, subsequent refusal by the President to give his assent will ~~only~~ involve the Premier's resignation and possibly election with that measure as an election plank. If the same Party is returned with a large majority based on the electoral issue connected with that particular measure, the Centre must acquiesce; for, the alternative could only be suspension of the Constitution, which would, of course, be extremely unwise in view of the mandate of the electorate.

4. In our previous consultations, I found Dr.Matthai, Dr.Shyamaprasad Mukherjee and Mr.Neogy were of the same view. Pantji, Shri Kher and Shri Krishna Ballabh Sahay of Bihar had also, after discussion, accepted this view.

5. I would, therefore, request you to reconsider the matter in the light of what I have stated above.

6. I have shown this letter to Dr.Mukherjee and Dr.Ambedkar. I am taking the liberty of forwarding copies of this letter to the Prime Minister and other friends who participated in the conference.

With kindest regards,

Yours very sincerely,

H.E. Shri C.Rajagopalachariar,
Governor-General of India,
Government House,
New Delhi.

NATIONAL ARCHIVES OF INDIA

622-GG/49
20.8.49

SECRET. (71) 68

DEPUTY PRIME MINISTER INDIA

Camp: Birla House,
Mount Pleasant Road,
Malbar Hill,
Bombay 6. 18.8.1949.

My dear Rajaji, P.54.

Thank you for your letter No.100(2)-GG/49 dated the 15th August 1949. Also thank you for your Greetings on the Independence Day which I warmly reciprocate. I was so unhappy to have spent that auspicious day away from you all, but God willed so.

2. As regards Article 24, I never wanted any change in the original form. So far as I was concerned, that was quite all right. It was only in deference to Pantji's difficulties and wishes that I acquiesed in providing for an exception in case of Zamindari property. My stand on this question has been quite definite and clear. I have always held that we are morally bound to provide for fair and equitable compensation. We have said so in our Election Manifesto in regard to acquisition of Zamindari. The Prime Minister has made two statements to the same effect in regard to industrial undertakings, both indigenous and foreign. Our economic difficulties demand that we should give no further shock to the investment market or to industrial operations. Both on grounds of expediency and of morality, as well as public policy, I do not see any other course open to us. However, I realised the difficulties of Provinces, particularly U.P. and Bihar and in future West Bengal, in regard to the acquisition of Zamindaris. There is also difficulty from our own party which has been fed on slogans and vague generalisations to such an extent that a section of it refuses to look at the problems in their practical aspects.

P.T.O.

NATIONAL ARCHIVES INDIA

(72)

3. In these circumstances, if you can get through your proposal it is all right by me. I am afraid I attach little value to what Sir B.N.Rau told you. I know it for a fact that he is also responsible for the great deal of confusion and vacillation which has been introduced into the consideration of this problem.

Yours
Vallabhbhai Patel

His Excellency
Shri C.Rajagopalachari,
Governor General of India,
Government House,
New Delhi

M

NATIONAL ARCHIVES OF INDIA

MINISTER FOR LAW
INDIA

621-GG/49 (23) 1, Hardinge Avenue,
20-8.49 NEW DELHI.

Dated 19th August 1949

69

My dear Rajaji

Please find herewith a copy of the draft as prepared by me which I showed to you this evening recast to bring sub-clause (2) in line with the same clause in the original draft which you were good enough to send me. I am also sending you a copy of your draft so that you may be in a position to compare the ~~same.~~ two.

As to the question of previous sanction, I shall speak about it to Mr.Munshi and others and try to persuade them to drop the idea.

With kind regards

Yours Sincerely

B.R.Ambedkar

His Excellency Shri C.Rajagopalachari,
Governor-General of India,
Government House,
New Delhi.

NATIONAL ARCHIVES OF INDIA

Re-draft of His Excellency the Governor-General's Draft.

74

ARTICLE 24

That for Article 24, the following shall be substituted:-

"24. (1) No person shall be deprived of his property save by authority of law.

Compulsory acquisition of property

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

(3) No law, as is referred to in clause (2) of this Article, made by the Legislature of a State shall have effect unless it has received the assent of the President.

(4) Nothing in clause (2) of this Article shall affect

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purposes of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property."

NATIONAL ARCHIVES OF INDIA

(25)

H.E.The Governor-General's Draft.

RIGHT TO PROPERTY

24. (1) No person shall be deprived of his property save by authority of law assented to by the President of the Union.

Compulsory acquisition of property

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

(3) Nothing in clause (2) of this Article shall affect -

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purposes of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property.

NATIONAL ARCHIVES OF INDIA

(76) 72

20th August 1949.

NO:100(2)-GG/49

My dear Ambedkar 20.8.49.

Thank you for your letter of the 19th August. I am happy to see the final draft of Article 24 enclosed therewith and hope all concerned will adhere to it.

Yours Sincerely,
sd. C. Rajagopalachari.

The Hon'ble Dr. B.R. Ambedkar,
Minister for Law.

Issued
20/8

NATIONAL ARCHIVES OF INDIA

SECRET

(77) 73

No: 100(27)-GG/49. 20th August 1949.

My dear Jawaharlalji,

p.67 Since I saw you this morning I have received K.M. Munshi's letter suggesting the insertion in Article 24 of a requirement as to previous sanction of the President. I adhere to my view that the insertion of such a requirement is unnecessary and that the same result could be attained through appropriate executive action.

p.68 I have also received a letter from Vallabhbhai on the same subject and enclose a copy for your information. As you will see Vallabhbhai also favours the original version of Article 24. He would not have objected to special treatment for Zamindari property but since our agreed draft does not distinguish one kind of property from another and practically retains the original form with one or two verbal changes we may now take it that it would be acceptable to Vallabhbhai.

Yours sincerely,

As 'payment' is removed & difficulties arising therefrom provided for, the article as it stands now meets Pant's position. C.R.

Sd. C. Rajagopala-chari.

The Hon'ble Pandit Jawaharlal Nehru,
Prime Minister.

Issued with encl:
20/8/49.

NATIONAL ARCHIVES OF INDIA

DEPUTY PRIME MINISTER
INDIA

SECRET.

Camp: Birla House,
Malbar Hill,
Bombay,
19th August 1949.

My dear Rajaji

Thank you for your letter of the 17th August 1949 and the agreed draft Article 24. I have already written to you that as far as I am concerned this would be quite adequate. I only hope that the party will not make any difficulties about it.

Yours sincerely
Vallabhbhai Patel

His Excellency
Shri C.Rajagopalachari,
Governor-General of India,
Government House,
New Delhi.

NATIONAL ARCHIVES OF INDIA

(29) No.100(2)-GG/49. 8/c 75

SECRET.

21st August 1949.

My dear Shankar,

H.E. has asked me to convey his thanks to the Sardar for his letter of the 19th August 1949 regarding draft Article 24. Copies of Sardar's letter have been sent to the Prime Minister and Dr. Ambedkar.

Trust Sardar's health continues to improve.

Yours sincerely,

Shavax A. Lal.

Issued 21/8/49.

Sri V. Shankar,
Private Secretary to
the Hon'ble Deputy Prime Minister,
"Birla House",
Mount Pleasant Road, Malabar Hill,
BOMBAY.

NATIONAL ARCHIVES OF INDIA

SECRET.

No. 100(2)-CC/49.

21st August 1949.

Dear Dr. Ambedkar,

H.E. has asked me to send, for your information, the enclosed copy of letter dated 19th August 1949 from Sardar Patel regarding Article 24.

Yours sincerely,

Shavax A. Lal.

Issued with enclosure
21/8/49.

The Hon'ble Dr. B.R. Ambedkar,
Minister for Law.

NATIONAL ARCHIVES OF INDIA

No. 100(2)-G.G/49.

SECRET.

21st August 1949.

My dear Mathai,

H.E. has asked me to send, for the information of the Hon'ble the Prime Minister, the enclosed copy of letter dated the 19th August 1949 from Sardar Patel regarding draft Article 24.

Yours sincerely,

Shavax A. Lal.

Issued with enclosure
21/8/49.

Sri M.O. Mathai,
Private Secretary to the
Hon'ble the Prime Minister.

NATIONAL ARCHIVES OF INDIA

MINISTER OF TRANSPORT & RAILWAYS INDIA

78

(82)

5, Queen Victoria Road,
New Delhi,
September 1, 1949.

V. Jan 2/9

no action
I & B seen
have been
1/9/49

My dear Rajaji,

Thank you very much for your letter of date which Shavax delivered to me at the Constitution House.

2. Your criticism of draft clause (4) of article 24 is quite justified, and you will be interested to hear that it has been decided to omit the words "shall be deemed to be just and proper" at the end of that clause and to substitute for them the words "shall not be questioned in any court of law". The opening words of the clause referring to Parliament laying down by law the principles of compensation have been omitted, and in their place the following words have been substituted :-

"When a Bill for enacting the law as referred to in clause (2) which is pending in the Legislature of any State at the commencement of this Constitution is passed into law, such law shall not have effect until it has received the

× Copy not recd.

NATIONAL ARCHIVES OF INDIA

assent of the President etc."

Even as so altered, I am not very happy yet about the wording of this clause. We shall probably vet it further in the Drafting Committee tomorrow.

3. Your alternative suggestion to add an item (c) to clause (5) would, I am afraid, not achieve the purpose for which clause (4) has been put in.

4. You have probably heard already that the Party by a majority carried the draft with the amendments I have indicated above at this evening's meeting. Clause (4), as finally accepted, in substance gives protection against judicial review in the case only of State laws which are pending before State legislatures at the commencement of the Constitution, are later passed into law and obtain the assent of the President. This complete protection against judicial review will be denied to laws which are made after the commencement of the Constitution, but which were not pending in the form of Bills at the commencement of the Constitution. This is a discrimination which it is not easy to justify, considering the fact that every such law would have to receive the assent

NATIONAL ARCHIVES OF INDIA

MINISTER FOR TRANSPORT & RAILWAYS * INDIA *

80

84

of the President under clause (3). As a matter of fact, after a fairly longish discussion with Pandit Pant, I prepared for consideration a re-draft of the whole of article 24, a copy of which I enclose for your information. You will notice that this draft steers clear of the discrimination I have referred to above, but at the discussion today between myself, Pant and Munshi, this re-draft of mine did not elicit the support of the other two who preferred the draft of clause (4) which was put before the Party meeting this evening and carried.

5. I must mention to you also that the Party gave a directive to the effect that the complete protection against judicial review which, under the new clause (4) as passed by it, would be available to the United Provinces should be made available also to the laws about zamindaris which have been passed or may be passed before the commencement of the Constitution by Madras and Bihar.

6. My own view is that when any law relating to compensation is made by a State legislature under

NATIONAL ARCHIVES OF INDIA

clause (2) and receives the assent of the President of the Republic, we must frankly shut out judicial review. Such a law would ex hypothesi have the support not only of the State legislature, the State Ministry and the Governor, but it will have the approval of the Union Ministry and the President of the Republic before the latter gives his assent thereto. It would by no means be inappropriate in a Constitution to say that a law which receives all this support both in the State and at the Centre should not be liable to be questioned as to its validity in a court of law.

7. There is an inherent incongruity in giving protection from judicial review only in the few cases which fall under clause (4) as accepted, and deny it in the much larger number of cases which will fall under clause (3).

8. The accepted draft is very far from being perfect but the problems it might create and the inelegance of the juxtaposition of clauses (3) and (4) are the price that has had to be paid

for...

NATIONAL ARCHIVES OF INDIA

(86) 82

for obtaining the support of a majority of Party members.

Sorry to inflict all this on you.

Yours Sincerely,
R. Gopalaswami

His Excellency Sri C. Rajagopalachari,
Governor-General of India,
New Delhi.

NATIONAL ARCHIVES OF INDIA

Re-draft of Article 24 by N.G. after discussion with Pantji.

RIGHT TO PROPERTY.

That for Article 24, the following shall be substituted :-

"24. (1) No person shall be deprived of his property save by authority of law.

Compulsory acquisition of property.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for equitable compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

(3) No law as is referred to in clause (2) of this Article made after the commencement of this Constitution by the legislature of a State shall have effect unless it has received t he assent of the President.

(4) Where the compensation paid for property taken possession of or acquired for public purposes is either the amount fixed by law or an amount which is determined in accordance with the principles laid down by law, such compensation shall be deemed to be equitable.

(Explanation) - Law in this sub-clause means either a a law made by Parliament or a law made by the legislature of a State which has taken effect under clause(3) of this Article.

(5) Nothing in the foregoing provisions of this Article shall affect -

(a) the provisions of any existing law, or

NATIONAL ARCHIVES OF INDIA

(b) the provisions of any law which the State ~~may~~ may hereafter make for the purposes of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property."

*****

NATIONAL ARCHIVES OF INDIA

Revised Draft of Article 24.

(89)

RIGHT TO PROPERTY

That for article 24, the following shall be substituted:-

"24. (1) No person shall be deprived of his property save by authority of law.

Compulsory acquisition of property

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

(3) No law, as is referred to in clause (2) of this article, made by the Legislature of a State shall have effect unless it has received the assent of the President.

(4) Until Parliament by law lays down the principles on which and the manner in which compensation is to be determined and given, no law passed by the Legislature of any State shall have effect until it has received the assent of the President; and when so assented to, the principles and the manner prescribed in such law for determining and giving compensation shall be deemed to be just and proper.

(5) Nothing in clause (2) of this article shall affect -

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property.

NATIONAL ARCHIVES OF INDIA

JJ: 701-GG/49.

(90) 86

ALLADI KRISHNASWAMI AIYAR

'PHONE: 84106

(Personal) 5.9.49.

"EKAMRA NIVAS"
LUZ

Mylapore, ... *19*

13-C, Ferozeshah Road,

New Delhi.

5th. September 49.

Dear Excellency,

I am herewith sending you a copy of the letter which I have adressed to Mr. N.G.Ayyangar with reference to the proposed further amendment in re article 24 in regard to the Madras legislation. I request you to give the best consideration to it and see that justice is done. My letter to Mr. N.G.Ayyangar speaks for itself and does not need any further explanation.

With regards,
Yours sincerely,
H. Krishnaswami

Submitted with papers.
5.9.49
5/9/49

A.S.

NATIONAL ARCHIVES OF INDIA

(Personal)

(91)

Alladi Krishnaswami

13-C, Ferozeshah Road,
New Delhi.
5th. September 49.

My dear Gopalaswami Ayyangar,

N.R.

Thank you very much for your letter of last night. I request you to consider the following points.

1. The Governor General's assent under the 1935 Act does not stand on the same footing as the President's assent under the Draft Constitution. Under the Govt. of India Act of 1935 the Governor General's assent does not bar the right of a party to challenge the validity of the Act on the ground that the Act does not conform to the provisions of section 297. Therefore the responsibility which the Governor General was called upon to discharge was different from the kind of responsibility cast upon the President by the special provisions of clause 4 of article 24.

2. Apart from the constitutional aspect I am constrained to point out that the Government of Madras are behaving in a most autocratic manner in regard to the application of the Madras Estate Abolition Act. They propose to take immediate possession of certain notified estates immediately without paying compensation or making any arrangement as to such payment. I might mention that one of my villages which is under tenure in the Venkatagiri estate is to be affected by the notification. Their case is that they are not bound to make any payment until after survey operations in the different estates are completed, which may take several years. They say that their advocate general has given an opinion that no sort of advance payment can be made. The obligation to pay being admitted, they will not even agree to an advance payment, on say, a bond being executed by the landholder agreeing to adjust the amount paid as against the compensation found ultimately due. I am in a position to state that both the Home Department and H.E the Governor General realise the unjustness of the attitude taken up by the Madras Government. But in spite of advice and any pressure from the Government of India, the Government of Madras are determined to go ahead. In these circumstances, I would appeal to you to defer the validating of the Madras Act and giving a conclusive effect to it until at least next month, by which time the Madras Government may set matters right, if need be, by inserting a special amendment to the Estates Abolition Act There will be no difficulty whatever in bringing forward a special amendment to section 299 of the Government of India Act 1935 giving an absolute immunity

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from action to the Government. If on the other hand, the immunity is given here and now, without the Government taking effective steps to make a partial payment of compensation at least, then there will be no incentive for them to bring in any amendment.

I am writing all this to you as in a hurried meeting of the Drafting Committee, it may not be possible ~~him~~ to consider the different points.

Yours sincerely,

H Thurs Rao

Madras

P.S. Besides the legislation itself is incomplete in that the Governor General has given his assent to the measure on the footing that the rules made under in re compensation section 40 of the Estates Abolition Act will be placed before him and his consent obtained.

With my good
Yours truly
H Thurs Rao

NATIONAL ARCHIVES OF INDIA

MINISTER FOR TRANSPORT & RAILWAYS · INDIA ·

Top Secret

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New Delhi,
September 6, 1949.

My dear Rajaji,

With reference to our telephonic conversation this morning, I send you herewith a re-draft of clause (5) of article 24. I send also copies of the drafts of clauses (4) and (5) as agreed to between us previously.

I have asked H.V.R. Iengar to see me at 11 O'clock.

Yours sincerely,
[signature]

His Excellency Sri C. Rajagopalachari,
Governor-General of India,
New Delhi.

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Re-draft of clause (5)

of Article 24.

....

(5) Any existing law of a State ~~making provision for the matters referred to in clause 2,~~ which has come into effect within one year immediately preceeding the commencement of this Constitution, may be submitted, after the commencement of this Constitution, to the President for approval; and, ~~on~~ the President so certifies according his approval thereto, the provisions of clause 4 shall apply to such law.

Shall if it makes provision for any matters referred to in clause 2

~~State~~

I think this should be

~~I have~~ from what Aiyangar has said to me it seems absolutely necessary to modify the proposed clause 5 ~~as it stands~~ & substitute a ~~draft~~ verbally amended draft based on 7th draft.

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Re-draft of clause (4)
of Article 24.

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(4) When a Bill for enacting a law in respect of the matters referred to in clause (2) and pending before the legislature of any State at the commencement of this Constitution is passed into law, such law shall not have effect until it has received the assent of the President, and, when so ~~ex~~ assented to, shall not be questioned in a Court of law.

Draft of clause (5)
of Article 24.

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(5) Any existing law of a State, making provision for the matters referred to in clause (2), which has come into effect within one year immediately preceding the commencement of this Constitution, shall be deemed to be a law which has received the assent of the President under this Article; and, in any suit or proceeding, whether instituted before or after the commencement of this Constitution, the provisions of clause (4) shall apply thereto.

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TOP SECRET.

6th September 1949.

My dear Gopalaswami,

From what Ayyangar has said to me it seems absolutely necessary to modify the proposed clause (5). I send herein a verbally amended draft based on your draft.

"approval" does not seem quite appropriate phraseology in respect of a law already passed. Hence my changes.

Yours sincerely,

sd. C. RAJAGOPALACHARI.

The Hon'ble Sri N. Gopalaswami Ayyangar,
Minister for Transport & Railways.

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Redraft of clause (5)

of Article 24.

(5) Any existing law of a State which has come into effect within one year immediately preceding the commencement of this Constitution shall, if it makes provision for any matter referred to in clause (2), be submitted, after the commencement of this Constitution, to the President; and, if the President so certifies, the provisions of clause (4) shall apply to such law.

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CENTRAL REGISTRY.

PAPERS FOR IMMEDIATE ATTENTION OF GENERAL BRANCH

[The contents may be removed and the folder returned to CENTRAL REGISTRY urgently.]

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